

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling**

JOHN W. SCHUMACHER,

Plaintiff,

v.

CIVIL ACTION NO. 5:20-CV-243
Judge Bailey

TRIAD ADOPTION INC., doing business
as Child Placement Center,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge James P. Mazzone [Doc. 3]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Mazzone for submission of a proposed report and recommendation ("R&R"). Magistrate Judge Mazzone filed his R&R on December 11, 2020, wherein he recommends that the Complaint be dismissed without prejudice and that the Motion for Leave to Proceed In Forma Pauperis be denied as moot.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo*

review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Mazzone's R&R were due within fourteen (14) days of service, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). Service was accepted on December 18, 2020. [Doc. 4]. Accordingly, plaintiff had until January 4, 2021, to file objections to the R&R. To date, no objections have been filed. Accordingly, this Court will review the R&R for clear error.

In his Complaint, plaintiff seeks an order directing defendant to produce records of his son's adoption and for damages for "30 years of pain, suffering, mental and emotional harm." [Doc. 1 at 2]. In the R&R, the magistrate judge found that this Court lacks personal jurisdiction over defendant. Construing the *pro se* Complaint liberally, the magistrate judge found that "there is no fact upon which the Court could rely to find minimum contacts exist between Defendant and the State of West Virginia." [Doc. 3 at 5]. Further, the magistrate judge found that even assuming personal jurisdiction exists over defendant, the Complaint fails to state a claim upon which relief can be granted because plaintiff's FOIA argument is inapplicable to a private corporation and that there is nothing in the Complaint indicating defendant is responsible for the alleged damages. [Id. at 6].


Upon careful review of the above, it is the opinion of this Court that the Report and Recommendation [Doc. 3] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the Complaint [Doc. 1] is hereby **DISMISSED WITHOUT PREJUDICE** and the Motion for Leave to Proceed in Forma Pauperis [Doc. 2] is hereby **DENIED AS MOOT**. This Court further

ORDERS that this matter be **STRICKEN** from the active docket of this Court and **DIRECTS** the Clerk to enter judgment in favor of defendant.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record herein and to mail a copy to the *pro se* plaintiff.

DATED: January 5, 2021.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE